vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.9745 OF 2003

Kisansa Chimansa Kshatriya & Ors. ... Petitioners

V/s.

Smt.Padmavati Vasantsa & Ors. ... Respondents

Mr.G.S. Godbole for Petitioners
Dr.V.V. Tulzapurkar with Mr.M.M. Sathaye for Respondent No.5

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 2, 2006**

P.C.:

. This Petition challenges the order of the civil Court under which the plaint has been directed to be returned to the Petitioner. The civil Court held that it has no jurisdiction to try the suit. The Appellate Court has taken a similar view. According to both the Courts below, the suit is essentially one for reliefs which are available under the Trade and Merchandise Marks Act, 1958 and therefore, the civil Suit is not maintainable.

2. Mr.Godbole, learned Counsel appearing for the Petitioners, pointed out that the suit is based on an arbitration award between the parties and for breach thereof; the Respondents having breached the award by

selling their product in the region which was allotted to the Petitioners, for which a civil Suit was the proper remedy. He relies on the judgment of this Court in the case of *Bhikusa Yamasa v/s. Jagannath Bhikusa,* **AIR 1979 Bom 302** where this Court considered a similar suit filed between the same parties and held that the Trade and Merchandise Marks Act had no application.

3. A perusal of the plaint and the reliefs claimed indicate that these are the reliefs which are available to the Petitioners under the Trade and Merchandise Marks Act for infringement of the trade marks. Whether it is a declaration that an infringement of the trade mark has occurred or a claim for damages, all these reliefs can be considered by a Court in a proceeding under the Trade and Merchandise Marks Act. The distinguishing factor in the judgment in the case *Bhikusa Yamasa (supra)* and the present petition is that the Trade Marks were not registered at the time when the judgment was delivered by this Court. The present Petitioner has sought to rely on the registered trade marks in support of his case.

4. In my view, the lower Courts have committed no error of law or jurisdictional error by returning the plaint. There is no infirmity in the impugned orders.

Petition is therefore, rejected.